

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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BRANDON M. WASHBURN,

Petitioner,

Case No. 21-cv-1093-pp

v.

JUDGE JOSEPH SCASCIA,

Respondent.

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**ORDER ADOPTING JUDGE DUFFIN’S RECOMMENDATION (DKT. NO. 4)  
AND DISMISSING CASE FOR FAILURE TO DILIGENTLY PURSUE IT AND  
FAILURE TO COMPLY WITH COURT ORDER**

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On September 20, 2021, the petitioner, who is representing himself, filed a petition for writ of *habeas corpus* under 28 U.S.C. §2241 challenging his civil commitment. Dkt. No. 1. He did not pay the \$5.00 filing fee.

On November 24, 2021, Magistrate Judge William Duffin recommended that the court dismiss the petition under Civil Local Rule 41(c) (E.D. Wis.). Dkt. No. 4. Noting that the petitioner had not paid the filing fee and that the September 21, 2021 letter to the petitioner from the clerk’s office regarding the magistrate consent form had been returned as undeliverable, Judge Duffin observed that the petitioner “ha[d] not had any further contact with the court.” Id. at 1. Judge Duffin found that “[t]he VINELink website [did] not indicate [the petitioner] as being in custody at the Dodge County Detention Center, and the Wisconsin Department of Corrections’ database indicate[d] that [the petitioner] is on active community supervision.” Id. at 1-2 (internal citations omitted).

Judge Duffin recommended that this court dismiss the petition and the case without prejudice under Civil L.R. 41(c). Id. at 2. Judge Duffin explained that “[b]ecause the court [did] not have a current mailing address for [the petitioner], th[e] order [would] not be mailed.” Id.

Because the petitioner did not receive the court’s consent form, instructions regarding the filing fee and Judge Duffin’s report and recommendation, the court gave the petitioner another opportunity to pursue his case. On May 16, 2022, the court issued an order requiring the petitioner to pay that \$5 filing fee, or to file a motion for leave to proceed without prepaying the filing fee, in time for the court to receive it by the end of the day on May 27, 2022. Dkt. No. 5. The court ordered that if it did not receive the \$5 filing fee or a motion for leave to proceed without prepaying the filing fee by the end of the day on May 27, 2022, it would dismiss this case under Civil L.R. 41(c) for the petitioner’s failure to diligently prosecute the case. Id. at 3. The court’s staff contacted the petitioner’s state probation officer for the petitioner’s current address and mailed a copy of the order to the petitioner at 403 Center Street, Randolph, WI 53956.

The May 27, 2022 deadline has come and gone. The May 16, 2022 order was not returned as undeliverable. The VINE system does not indicate that the petitioner is in the Dodge County Detention Facility, and the DOC inmate locator web site does not show him in a DOC facility. The petitioner has not complied with the court’s May 16, 2022 order—he has neither paid the filing fee nor filed a motion for leave to proceed without prepaying the filing fee. It

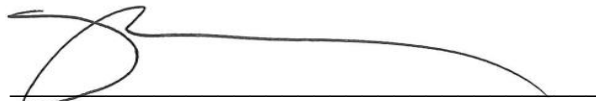
has been sixteen months since the petitioner filed his petition; the court has not heard from him since the court received the petition on September 20, 2021. As it said it would do in the May 16, 2022 order, the court will dismiss the case without prejudice. See Civil L.R. 41(c) (“Whenever it appears to the Court that the [petitioner] is not diligently prosecuting the action and Civil L.R. 41(a) or (b) does not apply, the Court may enter an order of dismissal with or without prejudice.”).

The court **ADOPTS** Judge Duffin’s recommendation. Dkt. No. 4.

The court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** under Civil Local Rule 41(c) for the petitioner’s failure to diligently pursue it and his failure to comply with the court’s order. The clerk will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 30th day of January, 2023.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**